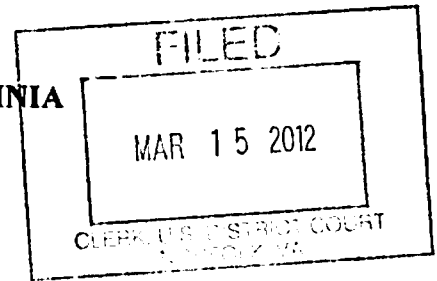


**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**



BERNEST DANIEL ELLIS, #1088717,

Petitioner,

v.

ACTION No. 2:11cv435

**HAROLD W. CLARKE,
Director of the Virginia
Department of Corrections,**

Respondent.

FINAL ORDER

Petitioner, a Virginia inmate, submitted a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 alleging violation of federal rights pertaining to his conviction in the Circuit Court for the County of Southampton for sodomy. As a result of the conviction, Petitioner was sentenced on October 9, 1997, to serve fifty years in the Virginia penal system with twenty-five years suspended.


The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Report and Recommendation, filed February 7, 2012, recommends dismissal of the petition as barred by the federal statute of limitations. Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On February 21, 2012, the Court received Petitioner's Objections to the Report and Recommendation. ECF No. 12. Further, Petitioner filed a Motion for Evidentiary Hearing on March 5, 2012. ECF No. 13.

The Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed February 7, 2012. It is, therefore, ORDERED that the petition be DENIED and DISMISSED. It is further ORDERED that judgment be entered in favor of Respondent. The Court has considered Petitioner's request for an evidentiary hearing and has determined that a hearing is not necessary here. The issues raised in the petition can be adequately resolved by the record before the Court. See Rule 8 of the Rules Governing Section 2254 Cases. Therefore, Petitioner's Motion for Evidentiary Hearing is DENIED.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within 30 days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to Petitioner and counsel of record for Respondent.



Raymond A. Jackson
United States District Judge

Raymond A. Jackson
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
March 15, 2012